



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GAVIN FINDERS, et al.,

Plaintiffs,

- against -

BK 19 INC., et al.,

Defendants.
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19-CV-11802 (ALC) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

On February 22, 2022, the Court issued an order to show cause at a hearing to be held on April 13, 2022, why sanctions, including but not limited to entry of judgment entered in favor of Plaintiff, should not be imposed against the defendant corporate entities for their vexatious conduct and repeated failure to comply with discovery obligations and orders. (See Dkt. 106.) Defendants filed no written response despite the Court's invitation to do so. At the hearing, counsel for Defendants appeared but was not able to provide any reasonable explanation for why the defendant corporate entities have not complied with their discovery obligations and the Court's discovery orders. Discovery sanctions are warranted pursuant to Fed. R. Civ. P. 37. Additionally, the Court finds that the Court's discovery orders have been clear and unambiguous, that defendants have not made any, let alone diligent, efforts to comply, that defendants have had fair warning of the consequences of failing to comply, and that sanctions are necessary. Before imposing the more severe sanction of entry of judgment against Defendants, the Court will order lesser sanctions to give them one last opportunity to comply and accordingly, as explained during the hearing, orders as follows:

1. No later than May 5, 2022, the corporate entity defendants, including but not limited to Green Devil 22 Inc., BMS 1989, and BK 18 Inc, must comply with, and complete production of documents in response to, all of Plaintiff's pending discovery demands in their entirety.

2. No later than May 5, 2022, an authorized officer of each corporate entity shall provide a sworn affidavit or declaration attesting that the defendant has produced all non-privileged documents in response to Plaintiff's document requests within that defendant's possession, custody, or control and located after conducting a reasonable and diligent search as required under the Federal Rules of Civil Procedure.

3. In the event that any defendant fails to comply with this order, then (a) starting on May 6, 2022, that defendant will be subject to a coercive sanction of \$1,000 per day, doubling each calendar day thereafter, unless and until that defendant complies, and (b) if compliance has not occurred by June 5, 2022, then in addition to being required to pay the monetary sanctions accumulated at that juncture, this Court will recommend entry of judgment against that defendant.

4. Additionally, the corporate defendants are jointly and severally liable for paying Plaintiff's reasonable attorney's fees and costs incurred in connection with Plaintiff's application for terminating sanctions and the order to show cause hearing. Defendants shall pay that amount to Plaintiff within 30 days of Plaintiff providing to defense counsel a record of reasonable fees and costs incurred.

5. Plaintiffs' most recent application for terminating sanctions is denied without prejudice.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal line extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 6, 2022
New York, New York